

Non-Criminal Barricade and Disengagement

409.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of the Missoula Police Department with additional options for resolving situations in which officers have legal cause to contact or detain a subject to render aid, provide resources, and/or determine if someone meets the criteria for a mental health evaluation, but the subject is not wanted for a crime, and it is reasonably determined that a direct confrontation with law enforcement as it relates to a non-criminal barricade is not a reasonably affective resolution tactic given the totality of the circumstances known by a department member at the time of an incident.

Officers and/or department members may come into contact with individuals dealing with a crisis and/or mental health issues, who have not committed a crime, and have barricaded themselves on private or public property. This policy provides specific strategies for the response, and resolution of these incidents, which can be complex, dynamic, and rapidly evolving. This policy is not written, nor intended, to interfere, contradict, or dissuade any member from exercising their legal authority to protect themselves, or others. This policy is not written, nor intended, to direct officers to retreat, cease efforts to apprehend suspect(s) during criminal investigations, or prevent officers from maintaining public safety goals.

With the knowledge that the authority to use physical force conferred on peace officers is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life, it is foreseeable that officers may find themselves in situations when confronting a person in crisis during a non-criminal barricade may in itself create an exigency, and subsequently result in harm suffered by the officer, or in the use of force by an officer.

While a goal of the department remains to provide reasonable, appropriate assistance when involved in non-criminal incidents, the ability of department members to provide such assistance may be contingent upon a subject's accepting, and consenting to an offer for aid under reasonably safe conditions for department members, given the totality of the nature of the incident members are responding to.

409.1.1 DEFINITIONS

Definitions related to this policy include:

Non-Criminal Barricade - A non-criminal barricade may stem from (but is not limited to) a non-criminal call for police service, such as that of a welfare check, medical assistance request, mental health evaluation request, crisis intervention request or the existence of an Order of Apprehension. If during such an incident, a subject who is not wanted for a crime begins to ignore, or oppose law enforcement efforts while maintaining a position of cover or concealment, the subject has barricaded themselves. A non-criminal barricade incident may occur whether or not it is reasonable to believe the subject is armed with a dangerous or deadly weapon.

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Special Relationship - A special relationship exists when a law enforcement officer or agency assumes a legal duty to protect a specific individual or group, beyond the general duty owed to the public at large. This relationship is typically established through the officer's conduct, which creates a reasonable expectation of protection or assistance. A special relationship may arise under the following two ways:

- (a) When an officer makes an express or implied promise of protection or assistance, and an individual reasonably relies on that promise to their detriment, resulting in foreseeable harm; or
- (b) When an officer takes an affirmative action that increases the foreseeable risk of harm to an individual.

When a special relationship is established, it creates a duty of care, an obligation to act reasonably to prevent harm where no such duty would otherwise exist under general law enforcement responsibilities.

Strategic Disengagement - Disengagement is the tactical decision to leave the scene, delay contact, delay custody, and/or plan to make contact with a person engaged in a non-criminal barricade at a different time, under different circumstances. This tactic should be considered when the choice for members to engage in or remain in direct contact with a non-criminally barricaded subject, may result in an undue safety risk to the subject, other individuals, or officers on scene, or the greater public.

Disengagement may result in law enforcement resources leaving the area as necessary, but does not inherently mean no further law enforcement resources will be provided at a later time. When considering the application of disengagement, members may also consider past contact with a person, or information known to them prior to direct contact with a person when determining if disengagement is appropriate. Strategic disengagement can be initiated by any officer on scene, with supervisory approval. Officers may also choose to disengage, and immediately notify a supervisor of their decision as soon as practicable if it would be unreasonable to delay such action for the sole purpose of seeking supervisory approval.

Strategic Re-Engagement - Re-Engagement is the tactical decision to resume engagement in a non-criminal barricade incident after disengagement efforts were applied. Re-Engagement may stem from the result of an incident becoming a criminal investigation, and/or the dynamics of an incident resulting in additional emergencies where disengagement tactics are no longer reasonably feasible. Re-Engagement may also be applied by referring the incident to outside resources for response consideration, or enlisting the assistance of other department resources at a later time.

Order of Apprehension - A court order issued under Montana Code Annotated Title 53, Chapter 21, authorizing law enforcement to apprehend a person by name and transport them to a licensed mental health professional or facility for evaluation. This order serves as a legal warrant for custody, transportation, and temporary detention within Montana's involuntary commitment process and is based on a judicial finding of probable cause that the person presently has a

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mental disorder and, as a result, poses an imminent danger of serious harm to self or others or is substantially unable to provide for basic personal needs of food, clothing, shelter, health, or safety.

409.2 POLICY

The Missoula Police Department will address non-criminal barricade situations with care and concern for the preservation of life and protection of subjects, officers, and third parties from the risk of injury whenever reasonable. Officers should be aware of the distinction between an armed, barricaded suspect wanted for a crime, and a barricaded subject who has not committed a crime, but is the primary subject of a crisis, and may have only expressed the desire to harm themselves. It is not a criminal act to express the desire to harm oneself, nor is it a criminal act to attempt or commit suicide. Suicidal and/or mentally ill subjects do not forfeit any constitutional protections. Officers should approach situations involving a Mental Health Order of Apprehension in the same manner as other non-criminal barricaded subject incidents. Although the order authorizes officers to take the individual into custody, the timing, tactics, location, and method of apprehension must be carefully evaluated through a risk-versus-benefit analysis and conducted in accordance with this policy.

Department members should balance the desire to resolve a non-criminal barricade peacefully, the overall goal of the preservation of life, and the goal of connecting a person in crisis with aid and/or resources, with the reality that a direct confrontation with law enforcement may in itself create exigent circumstances. As one of the department's primary goals is maintaining respect for human rights and dignity and for the sanctity of every human life, it is also a goal of the department to recognize that when dealing with non-criminal barricades, direct law enforcement involvement is not always the most appropriate means of assisting a person in crisis.

Department members should be prepared to consider strategic disengagement, or re-engagement during an incident based upon the totality of the circumstances known to the members at the time such a choice to disengage, or re-engage is made. When officers have a reasonable, articulable belief that an individual presents an immediate danger to themselves, prior to disengagement, officers should assess whether they could reasonably remain at the scene, and use other tactics to diminish the risk of harm to the subject without increasing the risk of harm to anyone else.

The department recognizes that incidents which were initially believed to be criminal investigations may dynamically change to a non-criminal incident. Additionally, incidents which were believed to be non-criminal in nature may dynamically change into a criminal investigation. An officer's reasonable ability to recognize these changes may be dependent on factors outside of the officer's reasonable control, or ability to collect information.

The reasonableness of a member's actions under this policy shall be evaluated based on the information that was reasonably available to the member at the time of the incident.

409.3 FIRST RESPONDER RESPONSIBILITY AND CONSIDERATIONS

This policy section is intended to guide officers in making constitutionally sound, tactically appropriate, and ethically grounded decisions when responding to complex and sensitive non-

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criminal barricade situations. When responding to a non-criminal barricade incident, officers shall assess the totality of the circumstances to determine an appropriate and reasonable course of action. Officers should make use of available resources, techniques, and de-escalation strategies to help resolve the incident safely and without unnecessary escalation.

Officers should consider the following three foundational factors when determining whether and how to intervene;

- (a) Is the subject alone? If others are present, are they free, willing, and/or able to leave voluntarily?
- (b) Is there a clearly articulable risk to the safety of the public, the subject, or others?
- (c) Is the subject located in a constitutionally protected area (e.g., private property, dwelling, inside a vehicle, or closed structure) or situated within the public domain?

Based on these guiding factors, officers should critically evaluate whether the governmental interest in intervention outweighs the subject's constitutional rights and expressed wishes. Forced entry or intervention may be constitutionally prohibited, unless there is an imminent threat to the life or safety of someone other than the subject in crisis, or a lawful exception applies (e.g., exigent circumstances).

Additional considerations may be relevant when navigating these incidents. The following is a non-exhaustive list, as each situation may involve a wide range of dynamic and unpredictable variables;

- Notify or consult shift supervisor as soon as reasonably practicable.
- Determine if any others are present with or near the subject, and whether they are free to leave.
- Assess whether the subject is believed to be armed or has access to weapons.
- Determine whether the subject is located on private property, public property, or inside a vehicle.
- Determine the subject's intentions to cause harm to themselves, others, and/or officers.
- Evaluate whether there is any indication of criminal activity and, if so, the nature and severity of the offense(s).
- Attempt to establish communication through available means (e.g., phone, intercom, verbal announcements).
- Evaluate whether the subject may be experiencing a mental health crisis and adjust the response accordingly.
- Evaluate the caller and the source(s) of information (i.e., whether first-hand or third-hand), and critically assess the reliability and accuracy of all reported or known details.
- Consider the need for additional personnel or specialized support, including crisis negotiators, specially trained officers, mental health professionals, or other applicable

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community resources (e.g., Montana 988 Crisis Hotline, MST, CIT or CNT Trained Officers).

- Evaluate whether a physical response to the scene by officers is appropriate or necessary based on available information and identified safety factors.

409.4 SUPERVISORY RESPONSIBILITY

A shift supervisor should be notified of all reported non-criminal barricaded incidents, continually monitor and evaluate the circumstances of the incident, and be prepared to recognize when an incident no longer meets the criteria of a non-criminal barricade.

409.5 DISENGAGEMENT

Disengagement may be appropriate when reasonable communication, negotiation, and policy intervention have failed, and an officer has determined that a direct confrontation with law enforcement is not a reasonably desired crisis resolution tactic.

Prior to disengaging and leaving the scene, officers should be mindful of the following;

- Update shift supervisor on the status of the situation and intent to disengage as soon as practicable.
- Consider the safety of the subject, others at the scene, and those who may arrive later. In the event of law enforcement disengagement, officers should make a reasonable effort to advise known involved parties of the departure of direct law enforcement recourses, and that a third-party choice to remain involved is done so at their own risk.
- Do not make any promises to the subject involved in the non-criminal barricade, their family, or other community members.
- Consider providing a disengagement advisement to those who have been contacted during the incident, advising them that the police department is leaving the area, and that they should call 911 if there is a new incident requiring intervention.
- Officers should attempt to gather relevant information about the subject, family members, and relevant location intelligence.
- Officers should be prepared to add notes to the incident history for the response or if necessary, write a report, documenting the reasons for disengagement, whether there was a criminal want at the time of disengagement, what measures were taken in an attempt to resolve the situation, and offered/provided aid.

409.5.1 DISENGAGEMENT ADVISEMENT

"THE MISSOULA POLICE DEPARTMENT IS GIVING NOTICE TO YOU (I.E. SUBJECT, FAMILY MEMBER, FRIEND, NEIGHBORS, AND/OR COMMUNITY MEMBER), AND ALL PERSONS DIRECTLY AFFECTED BY THIS INCIDENT THAT AFTER CONSIDERING THE FACTORS AFFECTING THE SAFETY OF ALL CONCERNED, THE BEST COURSE OF ACTION IS FOR THE POLICE DEPARTMENT PERSONNEL TO DISENGAGE AND WITHDRAW FROM THIS INCIDENT. WE CANNOT GUARANTEE YOUR SAFETY ONCE

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WE LEAVE. IN OUR ABSENCE, YOU ARE ENCOURAGED TO USE YOUR OWN JUDGEMENT AND TAKE REASONABLE PRECAUTIONS FOR YOUR SAFETY. IF A NEW EMERGENCY DEVELOPS, CALL 911."

409.6 RE-ENGAGEMENT PLAN/REFERRALS

Department members should be aware of the potential need to re-engage in a direct law enforcement response. Re-Engagement may result from (but are not limited to) the following circumstances;

- The incident transitions into a substantial criminal investigation, where it no longer meets the criteria of a non-criminal barricade.
- The dynamics of an incident result in additional emergencies, which are appropriate for law enforcement intervention, where disengagement tactics are no longer reasonably feasible.
- If persons involved in a non-criminal barricade become willing to accept an offer for resources/treatment under reasonably safe circumstances.

Re-Engagement tactics may also include referring the incident to outside resources for response consideration or enlisting the assistance of other department resources at a later time.

409.7 EVALUATION

The Department's CIT Program Managers should ensure that a thorough review and analysis of the department response to these incidents is conducted annually. The report will not include identifying information pertaining to any involved individuals, officers or incidents and will be submitted to the Chief of Police through the chain of command.